TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1903~~ 1904.

No. ~~163~~ 16.

METROPOLITAN RAILROAD COMPANY, APPELLANT AND PLAINTIFF IN ERROR,

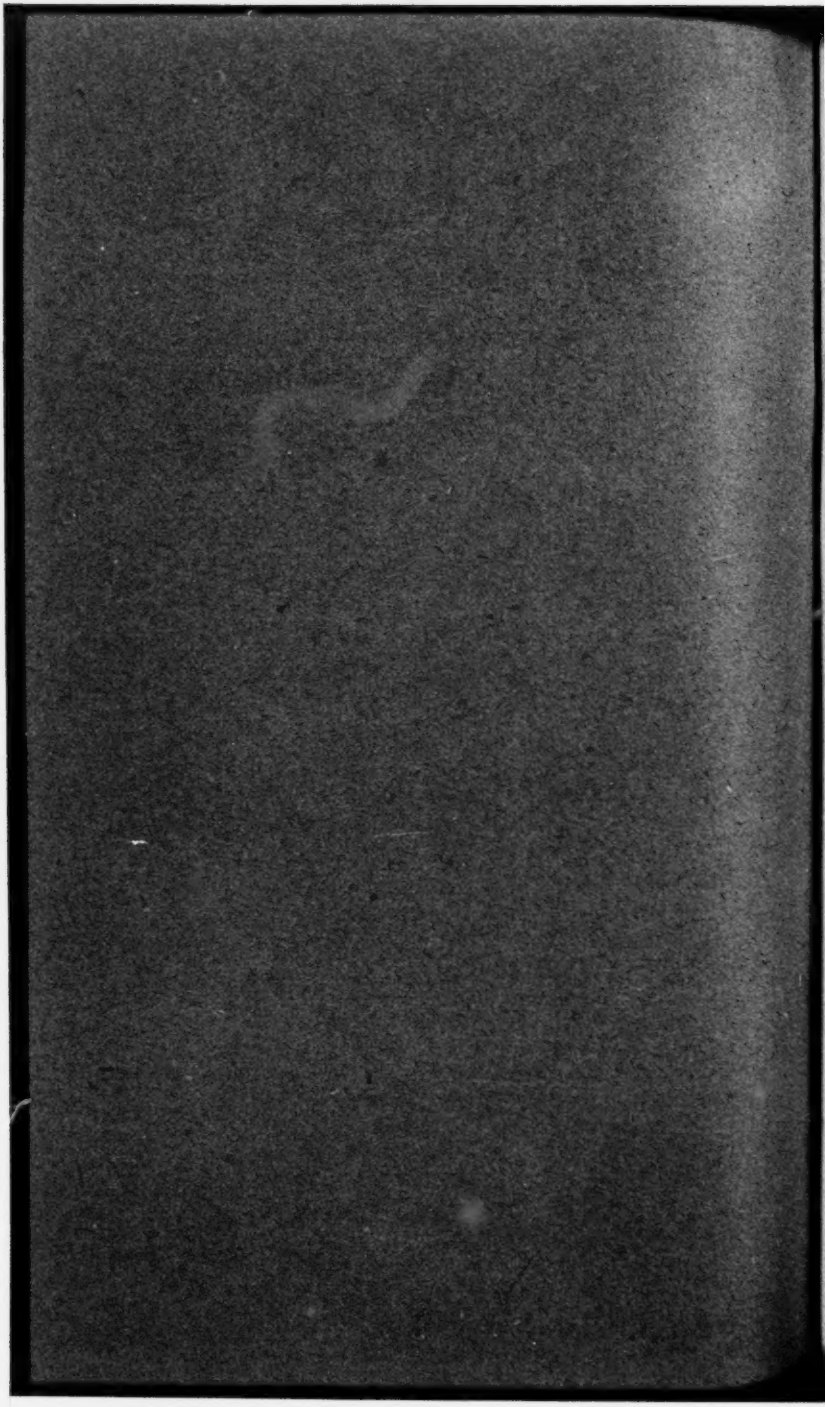
vs.

HENRY B. F. MACFARLAND, HENRY L. WEST, AND JOHN BIDDLE, COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

APPEAL FROM AND IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 9, 1903.

(18,778.)



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1 In the Court of Appeals of the District of Columbia.

METROPOLITAN RAILROAD COMPANY, Appellant,
vs.
HENRY B. F. MACFARLAND ET AL., Comm'rs, D. C. } No. 1147.

Supreme Court of the District of Columbia.

In re WIDENING OF COLUMBIA ROAD AND SIXTEENTH STREET. No. 577, District Court.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Petition.

Filed Jul- 12, 1900.

In the Supreme Court of the District of Columbia, Sitting as a District Court.

In re WIDENING OF COLUMBIA ROAD AND SIXTEENTH STREET.

The petition of Henry B. F. Macfarland, John W. Ross, and Lansing H. Beach respectfully shows:

1. That they are the Commissioners of the District of Columbia, and by the provisions of the act of Congress approved June 6, 1900, entitled "An act authorizing and requiring the Metropolitan Railroad Company to extend it- lines on old Sixteenth street," they were directed to institute, by petition, a proceeding in this court to condemn the land necessary for the widening of Columbia road to a width of one hundred feet, and the present Sixteenth street to a width of eighty-five feet from Columbia road to Park street.

2. That a map of the proposed extension or widening of Columbia road and Sixteenth street, showing the number and designation of the parcels of land affected thereby, the names of the owners thereof, and area of the land to be condemned for such widening, has been prepared and a copy thereof is hereto annexed, marked "Exhibit D. C. No. 1," and made a part of this petition.

3. That in and by said act of Congress it is provided, among
2 other things, as by reference thereto will appear, "That of the amount found to be due and awarded as damages for and

in respect of the land condemned for the extension of Columbia road and present Sixteenth street, as herein provided, such proportional amount thereof as the jury shall determine shall be assessed as benefits, and to the extent of such benefits, against respectively the Metropolitan Railroad Company and against those pieces or parcels of land on each side of said Columbia road and the present Sixteenth street northwest along those portions of said streets that are to be widened, and also on any or all pieces or parcels of land which will be benefited by the extension of said Columbia road and the present Sixteenth street northwest as said jury may find said pieces or parcels of land will be benefited; and in determining the amounts to be assessed against said pieces or parcels of land the jury shall take into consideration the respective situations of such pieces or parcels of land and the benefits they may severally receive from the extension of Columbia road as aforesaid." Wherefore your petitioners pray:

1. That Edward J. Stellwagen, George G. Brown, Albert E. Paine, Mary B. McReynolds, Timothy E. Wilcox, Clara B. Wilcox, Fannie C. Morey, Grace C. Morey, A. M. McLachlen, Robison White, George H. Dana, William W. Brown, Louisa D. Breckenridge, Edwin Shuffle, Isaac Hazlett, Elizabeth S. Smith, Butler F. Abbott, Louis P. Shoemaker, Henrietta Copperthwait, George P. Van Wyke, Jr., Mary I. McAllister, George Whitney White, Waddy B. Wood, Ebenezer J. Hill, Frederick A. Hill, Jacob B. Rawles, Mary H. Myers, Robert S. Woodward, Lauretta B. Gibson, George N. Rider, Lucy H. Diver, Elizabeth F. Sicard, David Crammer, Harriet L. Vining, Henry Hovey, Howard University, Eddy B. Townsend, Jennie B. Swaim, Mary E. Butterworth, William Butterworth, Robert H. Montgomery, Wastmoreland D. Davis, Elizabeth R. Chapman, William M. Scott, John D. Langhorne, Mary Swaim Thompson, Elbert Robertson, Oliver A. Morris, Matthew W. Edmonds, Katherine M. Edmonds, Stanley Pearce, Mary H. Langtree, David Ingalls, Alexander Grant, George F. Stone, Elizabeth Varney, Katherine S. Foos, John B. Henderson, Arthur H. Whitlark, David A. Irwin, James A. Bates, Charles H. Armes, Ellen Henriques, Edward C. Barnard, Herbert B. Blair, Mary F. Henderson, Mary A. Cushing, Carl E. Pelz, Priscilla E. Hendley, Levi Nagle, John B. Roach, J. Frank Black, Frances B. Dare, Alvin G. Belt, D. E. Parker, Robert N. Bayles, Sadie Tilley, Maria Johnson, Frederick J. Loudin, Anna M. Heinz, Henry D. Williams, Florence B. Solger, Josephine Thompson, William C. Borden, Julian C. Dowell, Southwich C. Briggs, Elizabeth Walbridge, John M. Clapp, Louis Baillieux, Alice Chase, W. Briggs, owners of the land proposed to be condemned, may be cited to attend this court at a day to be fixed by the court, and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and assessments of benefits to be made by a jury summoned hereunder.

3 2. That this court shall cause public notice to be given by advertisement in such manner as the court shall prescribe, a

required by the provisions of said act, warning all persons interested in this proceeding to attend this court at a day to be fixed in said notice, and to continue in attendance until the final confirmation of any award of damages and assessment of benefits that may be made in this proceeding.

3. That a jury of seven judicious, disinterested men may be summoned by the marshal of the District of Columbia to condemn the land necessary for the extension of said Columbia road, and to assess the benefits resulting therefrom, as required by said act of Congress.

4. That the land hereinbefore described, necessary for the widening of Columbia road and old Sixteenth street, may be condemned by the order and decree of this court.

5. And for such other and further relief as the nature of the circumstances of the case require and to this court shall seem proper.

HENRY B. F. MACFARLAND,
JOHN W. ROSS,
LANSING H. BEACH,
Commissioners of the District of Columbia.

A. B. DUVALL,
C. A. BRANDENBURG,
Attorneys for Petitioners.

DISTRICT OF COLUMBIA, *ss:*

Henry B. F. Macfarland and Lansing H. Beach upon oath say that they and John W. Ross are the Commissioners of the District of Columbia, and that they have read the foregoing petition by them subscribed as such Commissioners and know the contents thereof, and that the facts therein stated upon their personal knowledge are true, and those stated upon information and belief they believe to be true.

HENRY B. F. MACFARLAND.
LANSING H. BEACH.

Subscribed and sworn to before me this eleventh day of July, 1900.

WILLIAM TINDALL,
Notary Public, D. C.

[Endorsed:] 577. Dist. Ct. Copy. Petition. 4.

In the Supreme Court of the District of Columbia, Holding a District Court.

Filed August 2, 1900. J. R. Young, Clerk.

In re WIDENING OF COLUMBIA ROAD AND SIXTEENTH STREET. No. 577, Dist. Court.

It appearing to the court that the marshal, as directed by the order of the 1st inst., has summoned Robert I. Fleming,
4 Thomas W. Smith, John A. Hamilton, Edward Grover, James F. Oyster, W. A. H. Church and Henry O. Towles as the jury herein, and the court having accepted said jury as duly qualified, and having administered to them the oath, as provided in the act of Congress under which these proceedings are instituted, and the said jury having been organized, it is, this 2nd day of August, 1900—

Ordered that said jury view the land and premises to be condemned herein, and thereafter, on Friday, the 3rd day of August, 1900, at 2 o'clock p. m., and from time to time as they may determine by adjournment, they shall, in circuit court-room number two, or at such other place as may be convenient, hear and receive such evidence as may be offered or submitted to them on behalf of the District of Columbia and by any person or persons having any interest in the above-named proceedings for the "widening of Columbia road and Sixteenth street;" and when such hearing is concluded, the said jury or a majority of them shall return to the court in writing its verdict of the amount found to be due and payable as damages sustained by reason of such widening, and of the pieces or parcels of land benefited by such widening and the amount of the assessment for such benefits against the same and against the Metropolitan Railroad Company, in accordance with the act of Congress approved June 6, 1900, entitled "An act authorizing and requiring the Metropolitan Railroad Company to extend its lines on old Sixteenth street."

By the court:

JOB BARNARD, *Justice.*

In the Supreme Court of the District of Columbia, Sitting as a District Court.

Filed August 20, 1900. J. R. Young, Clerk.

In re WIDENING OF COLUMBIA ROAD AND SIXTEENTH STREET. No. 577.

Answer of the Metropolitan Railroad Company.

The respondent, The Metropolitan Railroad Company, for answer to the petition of Henry B. F. Macfarland, John W. Ross, and Lansing H. Beach, herein filed, shows to the court as follows:

This respondent is not the owner of any real estate or other property whatsoever, either abutting upon or adjacent to either Columbia road or Sixteenth street, along the portions of said road and street which are proposed to be widened, as set forth in said petition, and while, as it is informed, the former management of this respondent requested permission, at a previous session of Congress, to extend its lines over said Columbia road and Sixteenth street, it avers that the said application was then denied, and that no renewal thereof was ever made by this respondent, nor was any such application made by or on its behalf to the Congress by which the act of June 6th, 1900, referred to in said petition, was passed.

5 This respondent is advised and believes, and therefore avers, that the said act of Congress of June 6th, 1900, is unconstitutional, illegal, and void, in so far as it seeks to compel this respondent to extend its lines over the territory in question, and then to condemn land for public uses along the said extension which this respondent is thus required to make, and to compel it to pay therefor, under the guise or on the ground of speculative benefits to it from the said compulsory extension of its lines, and in the absence of any property owned by it and which could be benefited by the said contemplated condemnation proceedings.

As respondent is advised and believes, and therefore avers, the said act of Congress and any proceeding thereunder seeking to assess against it any portion of the cost of the lands proposed to be condemned is and must be to that extent wholly nugatory and void.

Wherefore respondent prays that this court will, by its order, dismiss said respondent wholly from the said proceedings, and will instruct any jury impanelled under any proceedings in this cause that no part of the cost of any lands which may be condemned thereunder can be assessed against it.

METROPOLITAN RAILROAD COMPANY,
By GEO. H. HARRIES, *Vice-President.*

J. J. DARLINGTON, *Solicitor.*

DISTRICT OF COLUMBIA, *ss:*

I, Geo. H. Harries, on oath say that I am the vice-president of The Metropolitan Railroad Company, respondent in the above-entitled cause; that I have read the foregoing answer by it subscribed and know the contents thereof, and that the allegations set forth on personal knowledge are true, and those set forth on information and belief I believe to be true.

GEO. H. HARRIES.

Subscribed and sworn to before me this 18th day of August, A. D. 1900.

DENIS J. DOWNING,
Notary Public.

[SEAL.]

Instructions Rejected.

Filed August 21st, 1900. J. R. Young, Clerk.

The jury is instructed that no benefits can be assessed by it against the Metropolitan Railroad Company as such, but that it can assess benefits only against such property of said company, if any, as it shall find will be benefited by the proposed widening and extension of Sixteenth street and Columbia road, and to the extent, if any, to which it shall find such property will be benefited by such widening and extension, just as in the case of the property of other owners which it may find will be so benefited.

Rejected, with permission to present later.

6 *Instruction.*

Filed August 21st, 1900. J. R. Young, Clerk.

In assessing benefits against property-owners the jury shall not take into consideration such benefit as may be the result of the extension of the railroad tracks along said street or road, but only such as would result from the widening.

Rejected, with permission to present later.

In the Supreme Court of the District of Columbia, Holding United States District Court.

Filed Sept. 5th, 1900. J. R. Young, Clerk.

In re EXTENSION OF SIXTEENTH STREET. No. 577.

Darlington's.

Please take notice that on Wednesday next, the 5th day of September, 1900, at 10 o'clock a. m., or so soon thereafter as counsel can

be heard, I shall re-present to the court the instruction on behalf of the Metropolitan Railroad Company offered and overruled heretofore, to-wit, on the 21st day of August, 1900, pursuant to the leave then granted to re-present the same, copy of said instructions being hereto annexed, the right being also hereby reserved to present to the court at the same time and place such other of the instructions on behalf of the said railroad company, copies of which are also hereto annexed, and of any other instructions on its behalf as the action of the court may, in the judgment of its counsel, make necessary or appropriate.

J. J. DARLINGTON,
Att'y for the Metropolitan Railroad Company.

Instructions Heretofore Offered and Overruled.

1*a*. The jury is instructed that no benefits can be assessed by it against the Metropolitan Railroad Company as such, but that it can assess benefits only against such property of said company, if any, as it shall find will be benefited by the proposed widening and extension of Sixteenth St. and Columbia road, and to the extent, if any, to which it shall find such property will be benefited by such widening and extension, just as in the case of the property of other owners which it may find will be so benefited.

Refused, and exception by Darlington.

1*b*. The jury is instructed that under the evidence in this case it can make no assessment of benefits against the Metropolitan Railroad Company.

Refused, and exception by Darlington.

7 Filed September 5th, 1900. J. R. Young, Clerk.

2. The jury is instructed that it can assess such benefits only against the Metropolitan Railroad Company, if any, as it has been shown by the evidence in the case will result to said company from the extension of Columbia road and present Sixteenth street, as provided in the act of Congress approved June 6th, 1900.

Granted, & exception by D. C. and also by G. F. Williams on behalf of certain property-owners.

3. The jury is instructed that it is not required to assess any part of the amount which it shall award as damages for and in respect of the land condemned in these proceedings against the Metropolitan Railroad Company, and that it is its duty not to do so unless it is satisfied by a fair preponderance of the evidence that the said company will be specially benefited by the proposed extension of Columbia road and the present Sixteenth street, and, in case it shall be so satisfied, it is its duty to assess against the said railroad company only such sum as shall be a fair and reasonable measure of such benefits.

Granted, and exception by D. C. and also by G. F. Williams on behalf of certain property-owners.

4. In determining the question whether or not said railroad company will be benefited by the said extension and the extent of such benefit, if any, the jury should consider the cost to which said company will be put in extending its lines from its present terminus, as provided in the act of June 6th, 1900, and the increased cost of operating its said lines as shown by the testimony, in connection with such evidence in the case as may tend to establish the fact and amount of such benefits to it.

Granted, & exception taken by D. C. and also by G. F. Williams on behalf of certain property-owners.

In the Supreme Court of the District of Columbia, Sitting as a District Court.

Filed September 27th, 1900. J. R. Young, Clerk.

In re THE WIDENING OF COLUMBIA ROAD AND THE PRESENT SIXTEENTH STREET NORTHWEST. No. —, District Court.

We, the jury in the above-entitled cause, hereby find the following verdict and award of damages for and in respect of the land condemned and taken for the widening of Columbia road to a width of one hundred feet and the present Sixteenth street to a width of eighty-five feet from Columbia road to Park street, etc., as shown on a plat or map filed with the petition in this cause, amounting to the sum of one hundred and eighty-one thousand and eight hundred and fifty-eight dollars [$181,858.00], as set forth in Schedule 1, hereto annexed as part hereof.

And we, the jury aforesaid, in accordance with the act of Congress approved June 6, 1900, for the widening of Columbia road
8 and the present Sixteenth street, do hereby find the amount of benefits resulting therefrom to be the sum of ninety thousand and nine hundred and twenty-nine dollars [$90,929.00] and twenty-five thousand dollars [$25,000.00.]

And we, the jury aforesaid, find that the Metropolitan Railroad Company [called in said act the Metropolitan Street Railroad Company] will be benefited by the aforesaid widening of Columbia road and the present Sixteenth street, and that the pieces and parcels of land that will be benefited by the aforesaid widening of Columbia road and the present Sixteenth street are the pieces and parcels of land on each side of said Columbia road and the present Sixteenth street where said streets are to be widened, and the other pieces and parcels of land mentioned and described in Schedule 2, hereto annexed as part hereof; and we find that the Metropolitan Railroad Company and the several pieces and parcels of land in said Schedule 2 will be benefited, as aforesaid, to the extent of the respective

amounts mentioned and set forth in said Schedule 2, and we assess against the Metropolitan Railroad Company and the pieces and parcels of land respectively as and for benefits, as aforesaid, the several amounts mentioned, specified, and set forth in said Schedule 2.

Witness our hands and seals this 25th day of September, A. D. 1900.

ROBERT I. FLEMING.
EDWARD GRAVES.
JAS. F. OYSTER.
HENRY O. TOWLES.
THOS. W. SMITH.
JOHN A. HAMILTON.
W. A. H. CHURCH.

SCHEDULE No. 2.

Metropolitan Railroad Company [called in bill Metropolitan Street Railroad Company].
Assessment, $25,000.00.

In the Supreme Court of the District of Columbia, Holding a District Court.

Filed October 17th, 1900. J. R. Young, Clerk.

In re THE WIDENING OF COLUMBIA ROAD AND THE PRESENT SIXTEENTH STREET N. W.

Order Nisi, Finally Confirming Verdict, Award, and Assessment of Jury.

It appearing to the court that on the 27th day of Sept., 1900, there was filed in this cause the verdict and award of the jury summoned by the marshal under the order heretofore passed herein to ascertain and award the damages which each owner of land may
9 sustain by reason of the widening of Columbia road and Sixteenth street and the condemnation of lands for the purposes of such widening, and to assess the benefits resulting therefrom against, respectively, the Metropolitan Street Railroad Company and against those pieces or parcels of land on each side of said Columbia road and the present Sixteenth street northwest along those portions of said streets that are to be widened, and also on any or all pieces or parcels of land which will be benefited by the extension of said Columbia road and the present Sixteenth street northwest, and that in and by said verdict said jury has found due and awarded as and for damages for and in respect of the land condemned and taken for the widening of Columbia road to a width of one hundred feet and the present Sixteenth street to a width of

eighty-five feet from Columbia road to Park street, as shown on a plat or map filed with the petition in this cause, amounting to the sum of one hundred and eighty-one thousand eight hundred and fifty-eight dollars [$181,858], as set forth in "Schedule 1," annexed to said verdict, namely:

And that in and by said verdict said jury has assessed the benefits resulting from the aforesaid widening of Columbia road and Sixteenth street as follows:

Against the Metropolitan Railroad Company the sum of twenty-five thousand [$25,000] dollars.

In the Supreme Court of the District of Columbia, Sitting as a District Court.

Filed Oct. 29, 1900. J. R. Young, Clerk.

In re WIDENING AND EXTENSION OF COLUMBIA ROAD AND SIXTEENTH STREET. No. 577.

Exceptions by Metropolitan Railroad Company to Assessment of Benefits Against It.

The Metropolitan Railroad Company excepts to the finding, assessment, and award against it for alleged benefits to it from the proposed widening and extension of the said Columbia road and Sixteenth street, and for cause or ground of exception shows:

1. That the said finding, assessment, and award are without evidence to support the same.

2. That the said finding, assessment, and award are contrary to the evidence.

3. That the said finding, assessment, and award are contrary to the weight of the evidence.

4. For errors of law in the instructions given and refused by the court to the jury over the objection and exception of the Metropolitan Railroad Company before the said finding, assessment, and award were made, as shown by the record of the said cause.

J. J. DARLINGTON,
Attorney for the Metropolitan R. R. Company.

10 In the Supreme Court of the District of Columbia, Holding a District Court.

Filed Nov. 23, 1900. J. R. Young, Clerk.

In re WIDENING OF COLUMBIA ROAD AND SIXTEENTH STREET NORTHWEST. No. 577, Dist. Court.

Motion to Finally Confirm Verdict.

Now come The Commissioners of the District of Columbia, petitioners herein, by their attorneys, and move the court to finally confirm the verdict, award, and assessment of the jury filed herein, notwithstanding the objections filed thereto.

A. B. DUVALL,
C. A. BRANDENBURG,
Attor'y- for Petitioners.

Please take notice that the foregoing motion will be called for hearing on Saturday, November 24, 1900, at 10 o'clock a. m., before Mr. Justice Hagner, holding the district court.

A. B. DUVALL,
C. A. BRANDENBURG,
Attorneys for Petitioners.

DISTRICT OF COLUMBIA, *sct:*

Personally appears Thomas J. Gorman, who, being duly sworn, deposes and says that on Wednesday, Nov. 21, 1900, at 6.00 p. m., he deposited in the United States mail-box in front of premises 472 Louisiana avenue, city of Washington, D. C., sealed official free-delivery envelopes, each containing a copy of the above motion and notice, addressed to the following persons: E. H. Thomas, att'y for George W. Brown and John H. Clapp; Chapin Brown, att'y for Louis Bailleux, Harriet L. Vining, Lydia A. Tanner, and Lucy H. Diver; Newton & Gillett, att'ys for Mary A. Cushing, Elizabeth Varney, Isabella Varney, Katherine Foos, Davis Ingalls, Mary H. Lampfree, and Arthur H. Whitlark; F. W. McReynolds, att'y for Mary B. McReynolds; J. J. Darlington, att'y for Metropolitan railroad; George N. Rider; Robert E. Longstreet; Louise D. Breckenridge; W. A. McKenney, att'y for Amer. Security & Trust Co., trustee of H. P. Dame; George Francis Williams, att'y for Butler F. Abbott, Elbert Robertson, and Oliver A. Morris; Gordon & Gordon, att'y- for Westmoreland D. Davis; W. W. Brown; Donald McPherson (in proper person), att'y for F. David Crammer, Francis B. Dare, Gertrude M. Guy; Mary E. Mann; Charles D. Walcott; Donald McPherson, att'y for M. F. Finley; T. B. Sanders; W. W.

Edwards, att'y for Peter J. Heinz; Alan O. Clephane, att'y for Pricilla E. Hendley; and John Ridout, att'y for Henry M. Walter.

THOMAS J. GORMAN.

11 Subscribed and sworn to before me this 22nd day of November, A. D. 1900.

A. LEFTWICH SINCLAIR,
Notary Public, D. C.

WM. F. MATTINGLY,
Att'y for Breckenridge.

C. E. PELZ.

Nov. 30.

April 3.

J. MILLER KENYON.

In the Supreme Court of the District of Columbia, Holding a District Court.

Filed November 28th, 1900. J. R. Young, Clerk.

In re WIDENING OF COLUMBIA ROAD AND SIXTEENTH STREET EXTENSION. No. 577, District Court.

Petition of Metropolitan R. R. Company to Make of Record Testimony as to Benefits to Metropolitan R. R. Co.

Now comes the Metropolitan Railroad Company and, showing to the court that the evidence in the above case was had before the jury without the presence of any justice of the court, and further showing to the court that the only evidence as to the benefits arising or to arise to this respondent from the proposed street widening and extension was that of James B. Lackey, as shown by the accompanying affidavit of E. H. Thomas, Esq., and further showing to the court that the testimony of the said James B. Lackey before the jury was taken down stenographically, a complete and correct transcript of the whole of which testimony is hereto annexed, as shown by the accompanying affidavit of Thomas J. Gorman, the stenographer who reported the same, prays the court that the said deposition of the said James B. Lackey may be filed as a part of the record in this case, the same being essential to the hearing and the determination of this respondent's exceptions to said award filed in this cause, and it being impossible for this respondent properly to defend its rights in the premises without in some way causing the said evidence and the fact that it was the only evidence in the case upon the question of said benefits to this respondent to appear of record.

DISTRICT OF COLUMBIA, *ss:*

I, James B. Lackey, on oath say that I am the secretary of the respondent, Metropolitan Railroad Company; that I have read and know the contents of the foregoing petition on its behalf subscribed with its name by me as its secretary; that the allegations therein set forth as of personal knowledge are true, and that those set forth upon information and belief I believe to be true.

JAMES B. LACKEY.

12 Sworn to and subscribed before me this 23rd day of November, 1900.

F. J. WHITESIDE, [SEAL.]
Notary Public.

Endorsed: Let the within petition be filed. A. B. Hagner, justice.

In the Supreme Court of the District of Columbia, Holding a District Court.

In re WIDENING OF COLUMBIA ROAD AND SIXTEENTH STREET EXTENSION. No. 577, Dist. Court.

DISTRICT OF COLUMBIA, *ss:*

I, Edward H. Thomas, on oath say that I am a member of the bar of the District of Columbia; that I was present at all the hearings before the jury of condemnation in the above-entitled cause, and that James B. Lackey was the only witness who testified before said jury upon the question of benefits to the Metropolitan Railroad Company arising or to arise out of the street widening and street extension contemplated in the above proceedings.

EDWARD H. THOMAS.

Sworn to and subscribed before me this 23rd day of November, 1900.

HENRY J. GROSS,
Notary Public.

[SEAL.]

In the Supreme Court of the District of Columbia, Holding a District Court.

In re WIDENING OF COLUMBIA ROAD AND SIXTEENTH STREET.
No. —, Dist. Court.

Before jury of condemnation, August 24, 1900.

Testimony of James B. Lackey, a Witness Called by and in Behalf of the Metropolitan Railroad Company.

Direct examination by Mr. DARLINGTON:

Q. Please state your name and occupation.
A. James B. Lackey, secretary of the Metropolitan Railroad Company.
Q. What relation, if any, do you bear to the Anacostia and Potomac Railway Company?
A. At the present time?
Q. Yes.
A. Secretary; I am its secretary, too.
Q. What were you during its period of recent construction?
A. Its secretary.
Q. Are you familiar with the cost of the construction of an underground electric railroad in this city?
A. I am.
Q. What is the length of the extension which your company will be required to make in compliance with the law?
13 A. Forty-seven hundred feet.
Q. What will be the actual cost of the construction?
A. One hundred and seventeen thousand dollars.
Q. What do you figure out the annual expense of the company will be, assuming you borrow at five per cent.?
A. Very close to five thousand eight hundred and fifty dollars.
Q. About six thousand dollars?
A. About six thousand will be the interest charged on the expense of the construction.
Q. That is the expense without any sinking fund?
A. That is the expense without anything except the interest on the money that goes toward the construction of the road.
Q. Have you made any computation of the addition to your annual expenses?
A. We have figured out that it will take at least two cars, and to operate two cars for the year it will take possibly eight thousand dollars.
Q. The cars cost you how much a day—running expenses for each?

A. Ten dollars a day.

Q. So that fourteen thousand dollars will represent your increased expenditure, being merely the interest on the cost of the construction of the road and your operating expenses, without touching the principal?

A. Yes, sir.

Q. Assuming that you never paid the principal back, how many additional passengers per day will be required to meet these fixed charges and operating expenses?

A. In the neighborhood of three hundred and thirty thousand people a year.

Q. How many will that make per day?

A. Nine hundred people per day.

Q. Nearly a thousand passengers a day?

A. Just about.

Q. So unless this extension increases your travel one thousand people per day, you will not get back your fixed charges and operating expenses?

A. No, sir.

Q. In your opinion, what financial benefit will that be to the Metropolitan Railroad Company—in the immediate or future time?

A. Immediately, there is none. If you look at the future—in that event you will have to look back and see what other roads have done.

Q. Is there any rule or principle governing the construction and operation of railroads which would enable you to determine within a definite time when you would begin to pay expenses?

A. Absolutely none. It depends upon the property-owners. We are at their mercy. We cannot tell; there is no way of telling.

Q. To what extent, if at all, did your companies contribute to the passage of this law. Were you for or against it?

A. We made no effort whatever to get this bill through. Made no effort at all.

Cross-examination by Mr. BRANDENBURG:

Q. Did you make any effort to oppose the passage of it?

A. We opposed a certain feature of it.

Q. You opposed merely the assessment feature?

14 A. Not only that; we opposed the feature of the territory not being ready for the railroad.

Q. So that your opposition was merely on the ground of the non-necessity of immediate construction; is that right? That, in addition to the assessment for benefits?

A. Yes.

Q. As a matter of fact, *Ben*, is not the idea of constructing a railroad out in this direction along Columbia road and out Sixteenth street, or did not that idea originate with your company?

A. I cannot saw that it did.

Q. Did your company originally make an attempt to construct a road through there?

A. I am not familiar with that part of it.

Q. You have been connected with the company for several years. Are you in a position to say that your company did request it?

A. I have only been connected with the company for two years.

Q. What railroad exists east of Fourteenth street and out in that direction, if any, in which the Washington Traction Company is interested? What railroad, if any, does there exist out in that direction?

A. The Metropolitan Railroad Company is the only company that owns any line out there.

Q. Where is that line?

A. Along Connecticut avenue to Eighteenth street and Columbia road.

Q. Now, east of Fourteenth street, what roads are there that operate out in that direction?

A. The next road is the Georgetown and Tennallytown road out Thirty-second street.

Q. I mean east.

A. The Brightwood Railway Company, on Seventh street.

Q. Has the Metropolitan Railroad Company ever desired to effect a connection between its lines of this city and a railroad east of Fourteenth street?

A. Not to my knowledge.

Q. Would it or would it not be a very desirable thing for your company to connect the Metropolitan Railroad Company with such a line?

A. On Ninth street?

Q. Yes.

A. No.

Q. Don't you consider that it is a very desirable franchise to operate out Columbia road and out Sixteenth street?

A. Any territory built up with houses would be a desirable place.

Q. Would you consider this a very desirable franchise?

A. I cannot say that I do.

Q. I ask you if the company does or does not want the privilege of constructing and operating a road along this line?

A. I suppose I should be in a position to answer that question, but I do not think it is a question that I should. It is a question that the board of directors should answer.

Q. You do not seem privileged to express the wishes of your company.

A. No, sir.

Q. The company would not decline anything advantageous to it, would it?

A. No, sir.

Q. Do you consider that anything that will carry you through the northwest section exceedingly desirable?

A. If we can get it upon terms profitable to us.

15 Q. Is it not a desirable thing to get the franchise to operate a railroad in the northwest corner of the city?

A. Not today.

Q. So you only want to limit your answer to "today"?

A. You understand what I mean by "today."

Q. You stated that the cost of construction would be one hundred and seventeen thousand dollars, figured on the basis of underground double-track system.

A. Yes, sir.

Q. Are you familiar with the cost of laying an underground system?

A. Yes, sir.

Q. How much would it cost a mile?

A. From fifty to sixty thousand dollars a mile.

Q. That including a double track?

A. Yes, sir.

Q. Why would it cost one hundred and seventeen thousand dollars to go forty-seven hundred feet?

A. We would have to cross over—cross-over and special work from three to ten thousand dollars.

Q. Your cost in the city per mile is from fifty to sixty thousand dollars. You have one crossing to make at Columbia road and Eighteenth street and you say that may cost you from three to ten thousand dollars——

A. Then we have a curve and cross-over at the other end of the line.

Q. A switch from one track to the other?

A. That is special work.

Q. How great a cost is that?

A. Three thousand dollars.

Q. Taking the maximum price and adding the cost of the switch at the end of the route—how do you account for the difference between the cost of that and one hundred and seventeen thousand dollars?

A. It is within four hundred feet of a mile. That would be one hundred thousand dollars right there. It would cost more if you laid but a single track. That is, a double track would cost less per mile for each track than a single track railroad. Each of these tracks would cost from fifty to sixty thousand dollars.

Q. I understood that fifty thousand dollars would be the cost of constructing a double-track railroad?

A. No; fifty thousand dollars for each track.

Q. That would be the cost in the city?

A. Yes, sir.

Q. For which road did you pay that?

A. That was the average for constructing the Anacostia and Potomac railroad.

Q. Did you have to change from one system to the other?

A. Yes, sir; from horse-car system.
Q. You charged to dig up paved streets?
A. Yes, sir; but we did not strike concrete.
Q. You include that in your estimate of cost?
A. Yes, sir.
Q. In this instance, what will be the cost?
A. Well, it will have to be repaved.
Q. You have referred to the number of passengers a day necessary to meet the operating expenses, which you fix at ten dollars per day per car?
A. Yes, sir.
Q. Twenty dollars for two cars?
A. Yes, sir; we would have to put on two more cars on the whole line to make up this forty-seven hundred feet. We figured that.
16 Q. These two cars would run over the rest of the route?
A. Yes, sir.
Q. So there would be no difficulty in taking up the requisite number of passengers?
A. We cannot count the passengers downtown. If we put on two more cars that would not benefit the company, only increase the expense.

Redirect examination by Mr. DARLINGTON:

Q. You say you proposed to take two cars over this extension?
A. It will take more; all the cars will run over it. It will take two additional cars to keep up service and carry out schedule.
Q. How do you make out this estimate of ten dollars?
A. The cars will run eighteen hours. The expense will amount to two dollars a day per man for eleven hours of work—that is, for the conductor and motorman for one day—that will be four dollars. The cost for two men for running the car the remaining eight hours will be three dollars and a half for the two men; about seven dollars and a half for wages alone. The cost we calculate for the power to run a car is two dollars and a half per day.
Q. What does a car cost?
A. The two cars will cost two thousand or twenty-two hundred dollars each—forty-four hundred dollars for two.
Q. Is the cost of the two cars included in your estimate?
A. No, sir; the one hundred and seventeen thousand dollars is for the track ready to operate.
Q. How long does a car last?
A. That is a very hard thing to say. It depends altogether upon the service. A car in the suburban service would not last as long as a car in the city.
Q. Mr. Brandenburg asked you what your company would like to do about running in this territory. Are you advised as to their views?
A. No, sir.

Recross-examination by Mr. BRANDENBURG:

Q. Is it your purpose to comply with this act of Congress and extend this road?

A. It has been considered, and I can say that it awaits the determination of this commission.

Q. As to whether there is an assessment for benefits or not?

A. Not necessarily that. We have not considered it by details.

Cross-examined by Mr. ROBINSON WHITE:

Q. Would this extension give you an entrance to the Zoological park?

A. No, sir. It will carry us past its Sixteenth Street entrance. The walk from the Sixteenth — entrance is a long one.

Q. You mean the Quarry Street entrance. How far is it?

A. About five or ten minutes' walk.

Q. Do you not know there are a good many people who cut across there and go down that road?

A. And also from Eighteenth street. We serve them now
17 from Eighteenth street and Columbia road, and it will be an additional accommodation to those people without any additional fare to us.

Q. Doesn't that increase your travel?

A. I would not say that it does.

Q. Wouldn't you say that persons now taking the Fourteenth Street line would be more likely to take your line?

A. No, sir.

Q. You take the people that go on Fourteenth street and cut across and go down the Quarry road—wouldn't they take your line in preference to the Fourteenth Street line?

A. Today we are six hundred feet nearer than the Capital Traction or Fourteenth Street line.

Q. I know; but there are a good many people who now take cars over the Fourteenth Street line. I ask you whether these people, if they could get out back there (indicating), they would rather take your line?

A. I believe from what I saw it will not stimulate traffic up there.

Q. Would it give you another entrance at Park avenue?

A. An entrance into Park avenue?

Q. Yes; and from there into the Zoo?

A. I am not familiar with the Zoo entrance there; I cannot say.

Q. And to that large park—the Rock Creek park?

A. I am not familiar with the entrance there. I couldn't *not* see any entrance there. I am not familiar with that entrance.

Q. This is to be a competitive road with the Fourteenth Street road, is it not?

A. Not along the lines which this line runs.

Q. Do you mean to say it would not be for people living out near Park street?

A. There might be some possibility. We would enter into competition with a limited number of people.

Q. Between Sixteenth and Fourteenth street?

A. Except those living very near to Fourteenth street and above a square of it.

Q. In other words, persons living near Sixteenth street would take your line?

A. Yes, sir.

Q. Didn't you ask for this extension last year?

A. Not to my knowledge; not since I have been connected with the road. My first knowledge of it was when it appeared in the *the* papers—after Senator McMillan introduced it.

Q. Then I understand that the railroad company did not solicit this extension while it was in a modified form?

A. Not while I was connected with the company. I know our people, the present management, did not ask for the bill.

Q. Did you not solicit Congress to pass it, incorporating an extension leaving out the assessment of benefits?

A. Not while I was connected with it.

Q. You say that it depends in a large measure whether you would construct this line after the widening of this avenue. You cannot say that it depends upon the amount of assessment?

Mr. DARLINGTON: I object. He cannot be called upon to foresee.

Mr. WIGHT: He has answered it.

A. It will depend upon what the board of directors do. I cannot answer for them.

18 DISTRICT OF COLUMBIA, *ss:*

I, Thomas J. Gorman, on oath say that I reported stenographically the deposition of James B. Lackey before the jury of condemnation in the Columbia road and Sixteenth street widening and extension case, No. 577, District court, and the foregoing is a full, complete, and correct transcript of said deposition.

THOMAS J. GORMAN.

Subscribed and sworn to before me this 23rd day of November, 1900.

RUTLEDGE WILLSON,

[SEAL.] *Notary Public, D. C.*

In the Supreme Court of the District of Columbia.

Filed July 9th, 1901. J. R. Young, Clerk.

In re WIDENING OF COLUMBIA ROAD AND OLD SIXTEENTH STREET.
No. 577, Dist. Court.

Decree of Final Confirmation of Verdict, Award and Assessment.

It appearing to the court that the order *nisi* confirming the verdict, award, and assessment of the jury filed herein has been duly published as therein provided, and that the Metropolitan Railroad Company and the owners of land condemned and the owners of land assessed in said verdict have been duly notified of the pendency of these proceedings, as provided in said order, and it appearing to the court that by a clerical error in said verdict an assessment appears to have been made against lot eighteen [18], in block fourteen [14*], of Meridian Hill subdivision, owned by George T. Dearing, in the sum of one hundred and fifty dollars [$150.00], whereas said assessment was in fact one hundred dollars [$100.00], and should have so appeared, it is this 9th day of July, 1901, by the court adjudged, ordered and decreed that the said verdict, award, and assessment be, and the same hereby is, amended accordingly, so as to show an assessment against said land in the sum of one hundred dollars [$100.00], and argument of counsel upon the exceptions to said verdict filed herein having been heard and considered, it is by this court, this 9th day of July, 1901, further adjudged, ordered, and decreed, upon the motion of the Commissioners of the District of Columbia, that the said exceptions and each of them be, and they are hereby, overruled and the aforesaid verdict, award, and assessment, as amended as aforesaid, be, and the same is hereby, in all respects finally confirmed.

A. B. HAGNER, *Justice.*

And from so much of the above decree as overrules its exceptions and confirms the verdict, award, and assessment against it, the
19 Metropolitan Railroad Company appeals in open court, and the penalty of the appeal bond is fixed by the court at one hundred dollars.

A. B. HAGNER,
Asso. Justice.

Memorandum.

July 22, 1901.—Appeal bond filed.

Stipulation.

Filed Aug. 19, 1901. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Sitting as a District Court.

In re WIDENING OF COLUMBIA ROAD AND SIXTEENTH STREET. No. 577.

It is hereby stipulated by and between the parties to the appeal of the Metropolitan Railroad Company against the decree of the court of July 9th, 1901, confirming the verdict, award, and assessment of benefits against the Metropolitan Railroad Company, that the following designated portions of the record shall constitute the transcript of record for the purposes of the appeal of the said Metropolitan Railroad Company in said cause:

1. Petition of Commissioners, filed July 12, 1900.
2. Instructions to jury, August 2, 1900.
3. Answer of Metropolitan R. R. Co., filed August 20, 1900.
4. Instructions offered by Metropolitan R. R. Co. and rejected, filed August 21, 1900.
5. Instructions 1*a* and 1*b* offered by Metropolitan R. R. Co. and rejected, and notice of same, filed Sep. 5, 1900.
6. Instructions 2, 3, and 4 of Metropolitan Railroad Co., granted, filed Sep. 5, 1900.

All instructions granted and excepted to by Metropolitan Railroad Co.

7. Verdict of jury, caption, and conclusion, and part thereof assessing damages against Metropolitan R. R. Co., filed Sep. 27, 1900.
8. Order *nisi* as to omitting recital of contents of verdict, filed Oct. 17, 1900.
9. Exceptions to verdict by Metropolitan Railroad Co., filed Oct. 29, 1900.
10. Motion to confirm, notwithstanding exceptions (omitting affidavit of notice), filed Nov. 23, 1900.
11. Petition of Metropolitan Railroad Co. to make of record certain testimony and allowance of same, filed Nov. 24, 1900.

Motion to vacate order on said petition.

20 12. Decree confirming verdict and endorsement of appeal and fixing penalty of bond, filed July 9, 1901.

Opinion of Justice Hagner, if filed.

A. B. DUVALL,
Att'y, D. C.
J. J. DARLINGTON,
For Met. R. R. Co.

Order Extending Time to File Transcript.

Filed Aug. 29, 1901.

In the Supreme Court of the District of Columbia.

In re THE EXTENSION OF COLUMBIA ROAD AND SIXTEENTH STREET.
No. 577, District Court Docket.

Upon consideration of the motion of the Metropolitan Railroad Company, this day filed, it is by the court, this 29th day of August, A. D. 1901—counsel for the Commissioners of the District of Columbia consenting thereto—ordered that the time for filing the transcript of record in the Court of Appeals by the said Metropolitan Railroad Company be, and the same hereby is, extended for a period of thirty days from the expiration of the time allowed therefor by the rules.

JOB BARNARD,
Associate Justice, S. C. D. C.

O K.
A. B. DUVALL, *Att'y.*

Order Extending Time for Filing Transcript.

Filed Sep. 27, 1901.

In the Supreme Court of the District of Columbia.

In re THE EXTENSION OF COLUMBIA ROAD AND SIXTEENTH STREET.
No. 577, District Docket.

Upon consideration of the motion of the Metropolitan Railroad Company this day filed, it is by the court, this 27th day of September, A. D. 1901, counsel for the Commissioners of the District of Columbia consenting thereto, ordered that the time for filing the transcript of record in the Court of Appeals by the said Metropolitan Railroad Company be, and the same hereby is, extended for the further period of thirty days from the expiration of the time for which it was heretofore extended under order of this court passed on the 29th day of August, 1901.

E. F. BINGHAM,
Chief Justice.

O K.
A. B. DUVALL, *Att'y.*

21 *Order Extending Time for Filing Transcript.*

Filed Nov. 23, 1901.

In the Supreme Court of the District of Columbia.

In the Matter of THE EXTENSION OF SIXTEENTH STREET AND COLUMBIA ROAD. District Court, No. 577.

On oral motion, it is by the court, this 23rd day of November, A. D. 1901, ordered that the time for filing the transcript of record by the Metropolitan Railroad Company on appeal be extended five (5) days from the time now fixed for filing same.

A. B. HAGNER, *Justice.*

I consent.

A. B. DUVALL, *Att'y.*

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 40, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this record, in cause No. 577, district court, *In re* widening of Columbia road and Sixteenth street, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 27th day of November, A. D. 1901.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1147. Metropolitan Railroad Company, appellant, *vs.* Henry B. F. Macfarland *et al.*, Comm'rs, D. C. Court of Appeals, District of Columbia. Filed Nov. 27, 1901. Robert Willett, clerk.

21½ TUESDAY, *December 10th, A. D.* 1901.

METROPOLITAN RAILROAD COMPANY, Appellant,
vs.
HENRY B. F. MACFARLAND, JOHN W. ROSS, and LANSING H. Beach, Commissioners of the District of Columbia. } No. 1147.

The expiration of the term of office of Lansing H. Beach, one of the appellees herein, and the appointment of John Biddle as his successor as Commissioner of the District of Columbia, having been suggested, it is upon motion of Mr. A. B. Duvall, of counsel for the appellees, now here ordered by the court that the said John Biddle, Commissioner of the District of Columbia, be, and he is hereby, made a party appellee in this cause.

THURSDAY, *May 15th, A. D.* 1902.

METROPOLITAN RAILROAD COMPANY, Appellant,
vs.
HENRY B. F. MACFARLAND, JOHN W. ROSS, and JOHN Biddle, Commissioners of the District of Columbia. } No. 1147.

The argument in the above entitled cause was commenced by Mr. J. J. Darlington attorney for the appellant, and was continued by Messrs. A. H. O'Connor and A. B. Duvall attorneys for the appellees, and by Mr. C. Cole, attorney for the appellant.

22 FRIDAY, *May 16th, A. D.* 1902.

METROPOLITAN RAILROAD COMPANY, Appellant,
vs.
HENRY B. F. MACFARLAND, JOHN W. ROSS, and JOHN Biddle, Commissioners of the District of Columbia. } No. 1147.

The argument in the above entitled cause was concluded by Mr. C. C. Cole, attorney for the appellant.

23 METROPOLITAN RAILROAD COMPANY, Appellant
vs.
HENRY B. F. MACFARLAND, JOHN W. ROSS, and JOHN Biddle, Commissioners of the District of Columbia. } No. 1147.

Opinion.

Mr. Chief Justice ALVEY delivered the opinion of the court:

This is an appeal from the decree of the court below sitting as a district court, confirming a special assessment against the appellant, The Metropolitan Railroad Company, in the sum of $25,000, as and

for benefits accruing or that will accrue to the railroad company by reason of the extension and widening of Columbia road and what is known as Old Sixteenth street, in the District of Columbia. The proceedings were instituted by the Commissioners of the District of Columbia, under the act of Congress of June 6, 1900, providing for the widening of Columbia road and what is known as Old Sixteenth street, and the extension of the Metropolitan railroad from its present terminus at Columbia road and Eighteenth street, northwest, along said road and Old Sixteenth street to Park street.

As directed by the act, a jury of seven were impaneled, and thereafter and before concluding upon their verdict, the court was applied to by the appellant to give instructions to the jury to guide them in making up their verdict under the provisions of the statute. Of the several instructions proposed on behalf of the appellant, those which sought to exempt the appellant from all liability to assessment for benefits by reason of the widening and grading the ways mentioned were rejected; but others of such proposed instructions were granted by the court, to wit:

"2. The jury is instructed that it can assess such benefits only against the Metropolitan Railroad Company, if any, as it has been shown by the evidence in the case will result to said company from the extension of Columbia road and present Sixteenth street, as provided in the act of Congress of June 6, 1900.

"3. The jury is instructed that it is not required to assess any part of the amount which it shall award as damages for and in respect of the land condemned in these proceedings against the Metropolitan Railroad Company, and that it is its duty not to do so unless it is satisfied by a fair preponderance of the evidence that the said company will be specially benefited by the proposed extension of Columbia road and the present Sixteenth street, and, in case it shall be so satisfied, it is its duty to assess against the said railroad company only such sum as shall be a fair and reasonable measure of such benefits.

"4. In determining the question whether or not said railroad company will be benefited by the said extension and the extent of such benefit, if any, the jury should consider the cost to which said company will be put in extending its lines from its present terminus, as provided in the act of June 6, 1900, and the increased cost of operating its said lines as shown by the testimony, in connection with such evidence in the case as may tend to establish the fact and amount of such benefits to it."

The jury, under the foregoing instructions, returned their verdict to the court, showing the parcels of land required to be taken for the widening of the streets, and assessing the damages to be paid to the several owners thereof, at the aggregate amount of $181,858, and assessing the benefits at $90,929; and of this latter amount the sum of $25,000 was assessed to be paid by the Metropolitan Railroad Company, as its proportional part of the benefits, and the residue of the aggregate sum assessed for benefits was apportioned against cer-

tain parcels of land owned by various persons, but none of which land assessed was owned by the railroad company.

To this verdict of the jury the appellant filed exceptions, alleging that the verdict was without evidence to support it; that it was against the weight of evidence; and for errors of law in the instructions given, and for error in refusing to grant instructions proposed by the appellant. These exceptions were all overruled by the court, and the verdict of the jury was finally ratified and confirmed; and it is from that order that the appeal is taken.

As the constitutionality of the act of Congress of June 6, 1900, is brought into question, and also some of the provisions of that act are supposed to be of doubtful construction, it would seem best for the clear understanding and determination of those questions, that the provisions of the act so far as they relate to the matters in controversy, be set out in the terms of the act itself. The sections of the act that have a bearing upon the questions involved are the following:

24 "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Metropolitan Railroad Company of the District of Columbia be, and the same is hereby, authorized and required to extend by double tracks the lines of its underground electric railroad from its present terminus at the intersection of Eighteenth street and Columbia road easterly along Columbia road to the present Sixteenth street northwest, thence north along Sixteenth street to Park street: *Provided*, That no cars shall be switched in the streets after the expiration of two years from the passage of this act.

SEC. 2. That before such extension shall be constructed Columbia road shall be widened to *to* a width of one hundred feet, the present Sixteenth street shall be widened to a width of eighty-five feet from Columbia road to Park street, and in such widening the building restriction line on the eastern side of said street shall be taken as far as practicable to form the eastern side of said street when widened; and also sufficient land shall be acquired at the northwesterly corner of Columbia road and Sixteenth street so as to allow the street-railway tracks to be laid wholly without the roadway of Sixteenth street as extended according to the highway extension plans; all in accordance with plans to be prepared by the Commissioners of the District of Columbia; and the said Commissioners shall institute in the supreme court of the District of Columbia, sitting as a district court, by petition, particularly describing the lands to be taken, a proceeding *in rem* to condemn the land that may be necessary for the extension of Columbia road and the present Sixteenth street as herein provided, with a width of one hundred feet: *Provided*, That the said Commissioners are authorized and empowered to locate the lines of the railroad of said company within the area so to be acquired as aforesaid: *And provided further*, That the operation of the cars of the Metropolitan railroad within the Capitol grounds shall be under the control of the architect of the Capitol;

And provided further, That no tracks shall be laid on any portion of the roadway of Sixteenth street as extended according to the highway extension plans.

SEC. 3. That the extensions of the lines of the Metropolitan Railroad Company herein provided for shall be completed and put in operation within one year from the date of the widening of said highways as herein provided, and said company shall deposit with the collector of taxes of the District of Columbia such sums as are necessary to pay the cost of inspection of said work.

SEC. 4. That of the amount found to be due and awarded as damages for and in respect of the land condemned for the extension of Columbia road and the present Sixteenth street, as herein provided, such proportional amounts thereof as the jury hereinafter provided shall determine shall be assessed by said jury as benefits, and to the extent of such benefits, against respectively the Metropolitan Street Railroad Company, and collected as special assessments are collected, and against those pieces or parcels of land on each side of said Columbia road and the present Sixteenth street northwest along those portions of said streets that are to be widened, and also on any or all pieces or parcels of land which will be benefited by the extension of said Columbia road and the present Sixteenth street northwest as said jury may find said pieces or parcels of land will be benefited; and in determining the amounts to be assessed against said pieces or parcels of land the jury shall take into consideration the respective situations of such pieces or parcels of land and the benefits they may severally receive from the extension of Columbia road as aforesaid: *Provided*, That if the aggregate amount of the benefits to be assessed against those pieces or parcels of land on each side of said Columbia road and the present Sixteenth street northwest along those portions of said streets that are to be widened, and also on any or all pieces or parcels of land which will be benefited by the extension of said Columbia road and the present Sixteenth street northwest as said jury may find said pieces or parcels of land will be benefited, as determined by said jury pursuant to the provisions hereof, is less than one-half of the amount of the damages awarded for and in respect of the land condemned, the Commissioners of the District of Columbia may, in their discretion, within thirty days after the filing of said award, reject the award and assessment of said jury, and all proceedings hereunder shall be null and void.

SEC. 5. That the said court shall cause public notice of not less than ten days to be given of the filing of said proceedings, by advertisement in such manner as the court shall prescribe, which notice shall worn all persons having any interest in the proceedings to attend court at a day to be named in said notice and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and assessment of benefits of the jury; and in addition to such public notice said court, whenever in its judgment it is practicable to do so, may cause a copy of said notice to be served by the marshal of the District of Columbia,

or his deputies, upon such owners of the land to be condemned as may be found by said marshal, or his deputies, within the District of Columbia.

SEC. 6. That after the return of the marshal and the filing of proof of publication of the notice provided for in the preceding section, said court shall cause a jury of seven judicious, disinterested men, not related to any person interested in the proceedings, and not in the service or employment of the District of Columbia or of the United States, to be summoned by the marshal of the District of Columbia, to which jurors said court shall administer an oath or affirmation that they are not interested in any manner in the land to be condemned nor are in any way related to the parties interested therein, and that they will, without favor or partiality, to the best of their judgment, assess the damages each owner of land taken may sustain by reason of the extension of said street and the condemnation of lands for the purposes of such extension, and assess the benefits resulting therefrom as hereinbefore provided. The court, before accepting the jury, shall hear any objections that may be made to any member thereof, and shall have full power to decide upon all such objections, and to excuse any juror or cause any vacancy in the jury, when impaneled, to be filled; and after said jury shall have been organized and shall have viewed the premises, said jury shall proceed, in the presence of the court, if the court shall so direct, or otherwise as the court may direct, to hear and receive such evidence as may be offered or submitted on behalf of the District of Columbia and by any person or persons having any interest in the proceedings for the extension of said street. When the hearing is concluded the jury, or a majority of them, shall return to said court, in writing, its verdict of the amount to be found due and payable as damages sustained by reason of the extension of said street under the provisions thereof, and of the pieces or parcels of land benefited by such extension and the amount of the assessment for such benefits against the same.

SEC. 7. That if the use of a part only of any piece or parcel of ground shall be condemned, the jury, in determining its value, shall not take into consideration any benefits that may accrue to the remainder thereof from the extension of said street or highway, but such benefits shall be considered in determining what assessment shall be made on or against such part of such piece or parcel of land as may not be taken as hereinbefore provided.

SEC. 8. That the court shall have power to hear and determine any objections which may be filed to said verdict or award, and to set aside and vacate the same, in whole or in part, when satisfied that it is unjust or unreasonable, and in such event a new jury shall be summoned, who shall proceed to assess the damages or benefits, as the case may be, in respect of the land as to which the verdict may be vacated, as in the case of the first jury: *Provided*, That if vacated in part, the residue of the verdict and award as to the land condemned or assessed shall not be affected thereby: *And provided fur-*

ther, That the exceptions or objections to the verdict and award shall be filed within thirty days after the return of such verdict and award.

SEC. 9. That when the verdict of said jury shall have been finally ratified and confirmed by the court, as herein provided, the amounts of money awarded and adjudged to be payable for lands taken under the provisions hereof shall be paid to the owners of said land by the Treasurer of the United States, *ex-officio* commissioner of the sinking fund of the District of Columbia, upon the warrant of the Commissioners of said District, out of the revenues of the District of Columbia; and a sufficient sum to pay the amounts of said judgments and awards is hereby appropriated out of the revenues of the District of Columbia.

SEC. 10. That when confirmed by the court the several assessments herein provided to be made shall severally be a lien upon the land assessed, and shall be collected as special improvement taxes in the District of Columbia, and shall be payable in four equal annual installments, with interest at the rate of four per centum per annum from the date of confirmation until paid. That said court may allow amendments in form or substance in any petition, process, record, or proceeding, or in the description of property proposed to be taken, or of property assessed for benefits whenever such amendments will not interfere with the substantial rights of the parties interested, and any such amendment may be made after as well as before the order of judgment confirming the verdict or award aforesaid."

1. The first and principal question raised is that which denies the constitutionality of the act of June 6, 1900, in so far as it requires the appellant, the railroad company, to extend by double tracks the lines of its underground electric railroad from its present terminus along the Columbia road and Sixteenth street to Park street. It is contended that the appellant cannot be compelled to extend its lines without the consent of its board of directors or stockholders; as by compelling the company so to extend the lines of its road without its consent would be taking private property for public or private use without compensation, and without due process of law. If this contention be well founded, it must follow as a necessary consequence that the right to the assessment made against the appellant for benefits that would accrue to it by the widening of the streets along which the extension is required to be made, must fail, and be declared to be without warrant or justification.

But is the act of Congress unconstitutional in the provision that requires the extension of the road? By the charter of the Metropolitan Railroad Company, act of Congress of July 1, 1864, and so in the charters of the companies subsequently embraced by that company, it is expressly declared "that this act may at any time be *altered, amended, or repealed* by the Congress of the United States."

It may be conceded that this reserved power in Congress is not entirely without limit, and that the power to alter, amend, or repeal must be exercised within reasonable bounds for the preservation of right and justice. It has been said by high authority, that the power must not be exercised in such arbitrary way as to destroy vested rights acquired in good faith under the chartered powers of the corporation. But it does not follow that this power to alter or amend may not be exercised to add new duties and obligations to those originally imposed, though such new duties and obligations may require the expenditure of large sums of money in their performance.

The question is, for what purpose was this power of alteration, amendment, and repeal reserved, if not to be exercised to promote the interests of the public, and to meet the requirements of that interest as it may arise? It was certainly not only intended to authorize the making of mere formal changes in the charter, but, as it has been most justly said, one of the most obvious reasons for reserving to the legislature the right to alter, amend or repeal such charters is to enable it to compel un unwilling corporation to perfect and extend its connections with other railroads, or to extend its road to certain localities, as the convenience of the public may from time to time require. Mayor, &c., of Worcester *v.* N. & Worcester Railroad Co., 109 Mass. 103, 113. And especially is this reason applicable, and with much greater force than in ordinary cases of railroads, when invoked in the case of an unwilling
26 street railroad company already in the use and enjoyment of a most valuable and extensive franchise, excluding all other roads from many of the principal streets of the city, and as to those streets constituting a monopoly. If the extension of such road can not be required to the less populous portions of the city, those sections may be entirely deprived of the benefit of street railroad facilities and improvement,—improvement indispensable to the extension and development of a city. Indeed, we may well suppose that it was within the contemplation of all parties concerned, at the time the charter was granted, that the lines of the road should, from time to time, be extended to meet the convenience and need of the public, and to conform to the growth and extension of the city. Legislation to meet such need has been had, upon several occasions, requiring such extension of this road, and without attempted resistance on the part of the corporation. Act of Cong., Aug. 2, 1894, sec. 2 (Stats. 28, p. 217); act of Cong., Feb. 26, 1895 (Stats. 28, p. 682); act of Cong., Feb. 27, 1897 (Stats. 29, p. 600).

It is contended that Congress could not exercise the power of requiring or compelling the extension of the lines of the road, as required in this case, without the consent of the corporation. But to sustain such a contention would simply render the reserved power to Congress to altar, amend, or repeal the charter, nugatory and without effect. The very object of the reservation of the power in the charter was to dispense with the consent of the corporation, and

to retain a power superior to the mere will of the corporation, or those who compose it. Nor can the exercise of such reserved power be construed as impairing the obligation of a contract as between Congress and the corporation. Nor is there the slightest ground for the contention urged by the appellant, that the proceeding in this case, under which the assessment was made against the appellant, deprives the latter of its property without due process of law. Davidson *v.* New Orleans, 96 U. S. 97, 105–6.

There are numerous decisions of the question as to the extent of the legislative power over charters granted subject to the right of alteration, amendment and repeal; but we shall not extend this opinion by citing many of them. In Massachusetts there have been several well-considered cases upon the subject, and which have been cited and approved by decisions of the Supreme Court of the United States. In that State the Revised Statutes contain a provision that every act of incorporation, passed since March 11, 1831, shall at all times be subject to amendment, alteration, or repeal, at the pleasure of the legislature. In the case of Fitchburg Railroad Co. *v.* Grand Junction Railroad Co., 4 Allen, 198, 205, the clause of the Revised Statutes just mentioned was applied to special statutes of 1856, ch. 296, and 1857, ch. 128, which required the Fitchburg, the Grand Junction and the Boston and Lowell railroad corporations, to make expensive changes at their crossings, and to erect a bridge of specified dimensions and materials, and construct a connecting track, and which directed how the work should be superintended, and how the expense should be apportioned. The objection was taken there that the legislature, in the special acts, had transcended its power in requiring the improvements to be made regardless of the consent of the corporations, and their right to control the work. But the court held, that, under the clause of the Revised Statutes, the changes were rightly ordered, and that the legislature might prescribe by whom, in what manner, and under whose supervision the work should be accomplished, and in what proportions, according to their respective interests, it should be paid for by the parties affected by it.

The same principle was reaffirmed and applied in the subsequent case of Commonwealth *v.* Eastern Railroad Co., 103 Mass. 254. In that case, a statute requiring a railroad corporation whose charter was subject to amendment, alteration, or repeal, at the pleasure of the legislature, to establish a flag station at a certain point on its line, and to erect there a station house, at which at least two trains each way should stop each day, was held to be clearly within the power of the legislature, under the reserved power to alter or amend. In the opinion of the court, by Chief Justice Chapman, after referring to the case in 4 Allen, to which we have just referred, it is said: "But, independently of the authority of those cases, it seems to us that the clause was intended to provide for such a case as the present. If the directors of a railroad were to find it for the interest of the stockholders to refuse to carry any freight or passengers ex-

cept such as they might take at one end of the road and carry entirely through to the other end, and were to refuse to establish any way stations, or do any way business for that reason, though the road passed for a long distance through a populous part of the State, this would be a case manifestly requiring and authorizing legislative interference under the clause in question. And on the same ground, if they refused to provide reasonable accommodation for the people of any smaller locality, the legislature may reasonably alter and modify the discretionary power which the charter confers upon the directors, so as to make the duty to provide the accommodation absolute. Whether a reasonable ground for interference is presented in any particular case is for the legislature to determine; and their determination on this point must be conclusive."

That case, with the paragraph from the opinion just quoted, was referred to with approval and adopted by quotation by the Supreme Court of the United States, in the case of Northern Pacific Railroad *v.* Dustin, 142 U. S. 492, 503–4.

In the more recent case of Mayor and Aldermen of Worcester *v.* Norwich and Worcester Railroad Co., 109 Mass. 103, it was held that the right of the legislature to amend, alter, or repeal the charter of a railroad corporation, under the General Statutes, ch. 68, includes authority both to withdraw powers granted to the corporation, and to confer new powers on it, and to require their exercise, and that independently of the assent of the corporation. In that case, the statute required of the defendant corporation, and certain other railroad corporations to unite in the erection of a station in the city of Worcester, for the accommodation of the passenger trains of all said corporations. The act further provided that the
27 station should be located on the northerly side of the main tracks of the Boston and Albany Railroad Company, between Green street and Grafton street, or upon the easterly side of Grafton street, and not more than fifteen hundred feet distant therefrom. The power of the legislature thus to require the railroad corporations to unite in the erection of the station, and to change their tracks, was strongly resisted by the railroad corporations, upon the grounds, that, by discontinuing the locations of the corporations named, and requiring them to locate and construct new railroads not within their existing locations, would interfere with vested rights, impair the obligation of contracts, and appropriate private property to public use without providing compensation therefor; and, consequently, such legislation was unconstitutional and void. But the court held the statute to be constitutional and valid, and to be a reasonable exercise of the power reserved to the legislature to amend, alter, or repeal the charters of the companies. And in the opinion of the court, it is said: "At any rate, the legislature was the exclusive judge as to that matter, and an amendment of the several charters, so as to secure such an object was a reasonable exercise of their reserved right. It is no valid objection to such

amendments, that they require corporations to extend their tracks, and to exercise the right of eminent domain for this purpose, and to incur additional expense. The power to extend their tracks is often granted at their own request; and is granted with no less propriety when the interests of the public require it. The power to alter a charter includes the right to take away some of the powers granted by it, or to add new powers without which improvements of the greatest importance would be *ultra vires*. Their compensation for the outlay is in the tolls they receive from travellers or others."

The decision just cited is quoted with entire approval by the Supreme Court of the United States, in the case of Shields *v.* Ohio, 95 U. S. 319, 325; and the decision in this latter case would seem to be quite sufficient to sustain the validity of the act of Congress of June 6, 1900, in respect to the power to require the extension of the defendant's line of road. And the act of Congress being valid, and creating a specific duty to extend the road of the defendant as prescribed, if that duty is neglected or refused to be performed, it may be enforced by mandamus against the corporation. Northern Pacific Railroad *v.* Dustin, 142 U. S. 492; Union Pacific Railroad *v.* Hall, 91 U. S. 342; New Orleans, etc., Railway Co. *v.* Mississippi, 112 U. S. 12.

2. But notwithstanding the defendant corporation may be required and compelled to extend the line of its road, as prescribed in the act of Congress, it is contended that it is not subject to assessment for benefits, and therefore, the apportionment of the assessments made for benefits to property along the line of the specified extension, as the consequence resulting from the widening of the streets, so far as the defendant corporation is concerned, is absolutely null and void. This contention is founded upon the theory, that because the corporation is not at present the owner of any abutting property along the line of the proposed extension, therefore it can not be legally assessed for benefits to the road to be hereafter extended. But we cannot assent to this proposition.

Instead of requiring the railroad company to acquire and prepare its own right of way along the extension, Congress deemed it best to require that the streets, to the extent of the required extension, should be widened and graded by and under the authority of the Commissioners of the District. This, however, did not relieve the railroad company from an obligation to pay a fair proportion of the expense of widening the streets, the assessment to be apportioned to the benefits that it would receive from the improvement in common with the abutting land owners. This is what is required by the terms of the act of Congress, and we think it but fair and just; and the case would seem to be strictly within the principle of the decision of Fitchburg Railroad Co. *v.* Grand Junction Railroad Co., 4 Allen, 198. It is true, the defendant has no abutting property along the line of the designated extension, but it has a franchise and a right to an easement in the bed of the streets, that

constitute property, and such right may be subject to the assessment for benefits; at any rate, Congress has made it so, and there can be no question of the right of Congress to prescribe such a basis of assessment. It is not upon abutting property, but against the railroad company that the proportional assessment is required to be made, and which has been so made. This proportional assessment, it is true, is directed to be collected as special assessments are collected; but this is not exclusive of all other methods of collection. New Haven *v.* Fair Haven & Westfield Railroad Co., 38 Conn. 422. By the assessment and apportionment of benefits by the jury, and confirmation of the verdict by the court, the right is settled, and the mode of collection is a question of a subordinate character. People *v.* Lawrence, 36 Barb. 131.

It is urged by the appellant that the apportionment of the assessments of benefits by the jury among the abutting land owners and the railroad company was not just and equitable, and therefore should be set aside. But there is nothing in the record to show, and we cannot assume, in the absence of sufficient proof, that the jury have acted recklessly and unjustly, and without regard to the rights of the parties, and the instructions of the court, given them at the instance of the appellant. Those instructions were as favorable as the appellant could reasonably ask, and we have no evidence in the case that the jury did not pay proper regard to them. They viewed the premises, as they were required to do by the statute, and heard such evidence as either party thought proper to offer for their consideration, and their verdict can only be questioned and shown to be unjust or unreasonable, by clear and indubitable evidence.

Finding no error in the rulings of the court below, the order appealed from will be affirmed; *and it is so ordered.*

Order affirmed.

28 WEDNESDAY, *October* 15*th*, *A. D.* 1902.

METROPOLITAN RAILROAD COMPANY, Appellant,
vs.
HENRY B. F. MACFARLAND, JOHN W. ROSS, and John Biddle, Commissioners of the District of Columbia.

No. 1147.
October Term, 1902.

Appeal from the supreme court of the District of columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this court that the order of the said supreme court, in this cause, be, and the same is hereby, affirmed, with costs.

Per Mr. CHIEF JUSTICE ALVEY.

October 15, 1902.

FRIDAY, *October 24th, A. D.* 1902.

METROPOLITAN RAILROAD COMPANY, Appellant,
vs.
HENRY B. F. MACFARLAND, JOHN W. ROSS, and JOHN Biddle, Commissioners of the District of Columbia. } No. 1147.

On motion of Mr. C. C. Cole, of counsel for the appellant in the above entitled cause, it is ordered by the court that said appellant be allowed an appeal to the Supreme Court of the United States on giving bond to act as supersedeas in the sum of thirty five thousand dollars.

29 In the Court of Appeals of the District of Columbia.

THE METROPOLITAN RAILROAD COMPANY
vs.
HENRY B. F. MACFARLAND and Others. } No. 1147.

And now comes the appellant by C. C. Cole its counsel and shows to the court that because of the fact that the record in this cause contains what may possibly be considered a bill of exceptions it may be that the proper remedy would be held to be a writ of error instead of an appeal to the Supreme Court of the United States. It therefore prays that this honorable court in addition to the appeal which was granted to it to the Supreme Court of the United States in this cause on the 24th day of October 1902, it may also be allowed a writ of error to said court and that the supersedeas bond required upon said appeal may also be taken and accepted as a supersedeas bond upon said writ of error.

C. C. COLE,
Attorney for the Metropolitan Railroad Company.

(Endorsed:) No. 1147. Metropolitan Railroad Co. *vs.* Macfarland & Others. Motion for writ of error in addition to appeal to U. S. Sup. Court. Court of Appeals, District of Columbia. Filed Nov. 18, 1902. Robert Willett, clerk.

30 TUESDAY, *November* 18*th*, *A. D.* 1902.

METROPOLITAN RAILROAD COMPANY, Appellant,
vs.
HENRY B. F. MACFARLAND, JOHN W. ROSS, and John Biddle, Commissioners of the District of Columbia. } No. 1147.

Writ of error to remove cause to the Supreme Court of the United States prayed by Mr. Charles C. Cole of counsel for appellant, allowed, and the same bond in the sum of thirty five thousand dollars to act as a supersedeas fixed on the appeal heretofore allowed in this cause, shall stand and act as a supersedeas upon said writ of error.

31 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between Metropolitan Railroad Company, appellant and Henry B. F. Macfarland, John W. Ross and John Biddle, Commissioners of the District of Columbia, appellees a manifest error hath happened, to the great damage of the said appellant as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Seal Court of Appeals, District of Columbia.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of November, in the year of our Lord one thousand nine hundred and two.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

32 FRIDAY, *December 5th, A. D.* 1902.

METROPOLITAN RAILROAD COMPANY, Appellant,
vs.
HENRY B. F. MACFARLAND, JOHN W. ROSS, and JOHN Biddle, Commissioners of the District of Columbia. } No. 1147.

It having been suggested to the court that during the pendency of this suit in this court the said John W. Ross departed this life on the 29th day of July 1902, after argument and submission of the cause to the court and that Henry L. West has been appointed his successor as a Commissioner of the District of Columbia, it is ordered that the name of the said Henry L. West be substituted for that of the said John W. Ross as a party to this suit.

By the court:

R. H. ALVEY, *Ch. Justice.*

33 (*Bond on Appeal.*)

Know all men by these presents, that we, the Metropolitan Railroad Company and the Washington Railway and Electric Company successor to Met. R. R. Co., as principals, and Fidelity and Deposit Company of Maryland, a corporation, of Baltimore city, Maryland, as surety, are held and firmly bound unto Henry B. F. Macfarland, Henry L. West and John Biddle, Commissioners of the District of Columbia, in the full and just sum of thirty five thousand dollars, to be paid to the said Henry B. F. Macfarland, Henry L. West and John Biddle, Commissioners as aforesaid, their certain attorney-, executors, administrators, successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of December, in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said court, between the Metropolitan Railroad Company and the said Henry B. F. Macfarland, Henry L. West and John Biddle Commissioners as aforesaid, a *a* judgment or decree was rendered against the said Metropolitan Railroad Company and the said Metropolitan Railroad Company having prayed and obtained an appeal and also a writ of error to the Supreme Court of the United States to reverse the decree or judgment in the aforesaid suit, and a citation directed to the said Henry B. F. Macfarland, Henry L. West and John Biddle, Commissioners as aforesaid, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, that if the said Metropolitan Railroad Company shall prosecute said appeal and writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[Seal of Metropolitan Railroad Company.]

METROPOLITAN RAILROAD COMPANY,
By GEO. H. HARRIES, *Vice President.* [SEAL.]

[Seal of Washington — & Electric Company.]

WASHINGTON RAILWAY AND ELECTRIC CO.,
By GEO. H. HARRIES, *Vice President.* [SEAL.]

[Seal of Fidelity & Deposit Co. of Maryland.]

FIDELITY & DEPOSIT CO. OF MARYLAND,
By W. H. RONSAVILLE, *Attorney-in-fact.* [SEAL.]

Sealed and delivered in presence of—

JAS. B. LASKEY, *Secretary.*
JAMES T. HANEY.

Approved by—
R. H. ALVEY,
Chief Justice Court of Appeals of the District of Columbia.

O K.
A. B. D., *Att'y D. C.*

[Endorsed:] No. 1147. Metropolitan Railroad Company *vs.* Henry B. F. Macfarland *et al.*, Commissioners D. C. Supersedeas bond on writ of error and appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Dec. 12, 1902. Robert Willett, clerk.

34 UNITED STATES OF AMERICA, *ss:*

To Henry B. F. Macfarland, Henry L. West, and John Biddle, Commissioners of the District of Columbia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District Columbia, wherein Metropolitan Railroad Company is appellant, and you are appellees, to show cause, if any there be, why the decree rendered

against the appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 12th day of December, in year of our Lord one thousand nine hundred and two.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted Dec. 12, 1902,

A. B. DUVALL,
For Appellees.

[Endorsed:] Court of Appeals, District of Columbia. Filed Dec. 12, 1902. Robert Willett, clerk.

35 UNITED STATES OF AMERICA, *ss:*

To Henry B. F. Macfarland, Henry L. West, and John Biddle, Commissioners of the District of Columbia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Metropolitan Railroad Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable R. H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 12th day of December, in the year of our Lord one thousand nine hundred and two.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted Dec. 12, 1902.

A. B. DUVALL,
For Def'ts in Error.

[Endorsed:] Court of Appeals, District of Columbia. Filed Dec. 12, 1902. Robert Willett, clerk.

36 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 35, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Metropolitan Railroad Company, appellant, *vs.* Henry B. F. Macfarland, Henry L. West and John Biddle, Commissioners of the District of Columbia, No. 1147, October term, 1902, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 20th day of December, A. D. 1902.

Seal Court of Appeals, District of Columbia.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 18,778. District of Columbia Court of Appeals. Term No. 186. Metropolitan Railroad Company, appellant & plaintiff in error, *vs.* Henry B. F. Macfarland, Henry L. West, and John Biddle, Commissioners of the District of Columbia. Filed January 8″, 1903.